IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C.No.446/2004

Sh. Sarwan Kumar Malhotra & Anr. .....Petitioners
! through: Mr. Gaurav Kanth, Advocate
for Mr. Alok Lakhanpal, Advocate

VERSUS

$ Sh. A.K.Malhotra .....Respondent
^ through: Mr. G.C.Sharma, Advocate

% **D**ATE OF DECISION: 22-10-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J. (Oral)

1. Petitioners are the real brothers of the complainant. Petitioners seek quashing of a complaint filed by their brother under Section 156(3) of the Code of Criminal Procedure alleging offences purportedly committed by the petitioners under Section 406/420/468/471/120-B IPC.

2. According to the complaint, the father of the 3 brothers expired on 1.4.1992. That petitioners forged a will purportedly executed by their father on 28.2.1992 and acting

under the forged will usurped the residential house of the father.

3. Seeking quashing of the complaint it is pointed out that the will in question is a registered will. The will gave life interest to the mother and on her death petitioners were the beneficiary of the property. Petitioners additionally rely upon the registered gift deeds dated 15.3.1996 executed by their mother in their favour exhilarating bequest.

4. Petitioners further state that a civil suit being Suit No.674/01 is pending adjudication before a Civil Judge. The plaintiff of the suit is the complainant. Relief claimed in the suit is a declaration that the will relied upon by the petitioners is a forged will.

5. I have perused the plaint as also copy of the complaint.

6. In my opinion, in view of the decision of the Supreme Court reported as 1987 (Supp.) SCC 146 *Sardool Singh & Anr. vs. Smt.Nasib Kaur*, the petition has to be allowed.

7. In *Sardool Singh's* case (supra), Supreme Court was considering a similar issue where a will was the subject matter of a civil litigation and criminal proceedings were

initiated alleging the will to be a forged document. It was opined

by the Supreme Court that since parties were litigating on the issue at a civil forum, criminal proceedings could not continue. However, it was observed that if civil suit results in a finding that the will was a fabricated and a forged document, at that point of time appropriate criminal proceedings could be initiated.

8. I follow likewise.

9. I dispose of the petition quashing the criminal complaint filed by the respondent, copy annexed as Annexure P-5. I clarify that if it is held by the Civil Court that the will in question is a forged will, it will be open to the complainant to take resort to criminal proceedings as per law.

October 22, 2007 **PRADEEP NANDRAJOG, J.**
dk